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SUPREME COURT OF THE UNITED STATES

BRIAN V. HUNTER AND JEFFERY JORDAN
v. JAMES V. BRYANT, JR.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 90-1440. Decided December 16, 1991

JUSTICE KENNEDY, dissenting.

Petitioners in this case are agents of the Secret Service. Among the questions presented are the proper interpretation of 18 U. S. C. § 871(a), which prohibits mail threats against the President, and the proper standard for summary judgment on grounds of qualified immunity. Whether implied or expressed, our resolution of these questions will be parsed by the Service and by later courts. The importance of these questions suggests that we should not dispose of them in summary fashion.

For the reasons stated in today's per curiam opinion and in the dissent by Judge Trott in the Court of Appeals, I must agree that the holding of the Court of Appeals is open to serious question. The majority opinion of that court seems not to have considered all of the facts on which the agents relied, in particular the statements made by Bryant and his responses (or non-responses) to the agents' questions. This calls in question its determination that qualified immunity has not been established on summary judgment.

To reverse in this case, however, the Court considers an issue on which some doubt has been expressed, which is whether the Court of Appeals applied the correct legal standard to resolve the qualified immunity issue on summary judgment. Two members of the Court disagree with the statement in the per curiam opinion that the Court of Appeals misstated the law. See *ante*, at ___; *ante*,

2 Pp

at ____ (SCALIA, J., concurring in the judgment); *ante*, at ____ (STEVENS, J., dissenting). Given this disagreement, as well as the precedential weight that later courts will accord to all of the questions presented in the case and addressed here in express terms or by clear implication, the case does not lend itself to summary disposition. I would set the case for full briefing and oral argument.

For these reasons, I dissent from the judgment of summary reversal in this case.